

12-4-2001

(M)

16.

PH O.A = 2711/2000

M.A = 21/2001

Present: Shri G.D. Gupta, learned Counsel with Shri P.P. Sharma, Counsel for the applicants.

Shri K.K. Sood, learned Additional Solicitor General with Shri H.K. Gangaraj, Counsel for the respondents 1-3.

Shri V.K. Rao, learned Counsel for respondent No. 4.

At the request of the learned Additional Solicitor General who states that he is busy in another court.

List on 19-4-2001 at 2.00 PM as part-

heard.

(Govindan S. Tampli)  
Member (A)

82  
(Smt. Lakshmi Suaminathan)  
Vice Chairman (S)

PH. case.  
Pl. complete  
at 2.00 PM  
MA for certificate

82

24-4-2001

15

7.

DH O.A = 27/11/2000

M.A = 21/2001

Present. None for the applicants.

Shri H.K. Gangaram, learned  
counsel for the respondents.

As this Bench is not available  
at 2.00 PM, list on 25-4-2001 as  
part-heard.

Dr  
(Gourdan S.Tampi)  
Member (A)

Y/  
(Smt. Lakshmi Swaminathan)  
Vice Chairman (C)

(16)

11.  
PH OA 2711/2000  
MA 21/2001  
(at 2.00 P.M.)  
25.4.2001

Present:- Shri G.D. Gupta, learned counsel  
through Shri S.K.Gupta, learned proxy  
counsel for the applicant.

Shri H.K.Gangwani, learned counsel  
for the respondents.  
This is a part-heard case.

At the request of learned proxy counsel for the  
applicant, list on 2.5.2001 at 2.00 P.M.

(Govindan S. Tampi)  
Member(A)

(Smt. Lakshmi Swaminathan)  
Vice-Chairman(J)

/kedar/

P.H. Case  
Pl. complete  
at 2.00 pm  
or for Clarific

2-5-2001

JP

9.

PA O.A - 27/1/2000

M.A - 21/2001

Present. Shri G.D. Gupta along with Shri P.P. Sharma, learned counsel for the applicants.

Shri H.K. Gangwani, learned counsel for the official respondents.

Learned counsel for the respondents submits that learned Additional Solicitor General has been suddenly called to appear before the Hon'ble High Court and hence he is unable to be present today. Shri G.D. Gupta, learned counsel for the applicants has correctly pointed out that number of adjournments have been taken by the respondents for one reason or the other and each time the date has been fixed on the convenience of both the parties.

At the request of learned counsel for the respondents, list on 8-5-2001 at 2.00 PM as part-heard. No further adjournment will be granted.

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(Gounday S. Tampli) (Smt. Lakshmi Swaminathan)  
Member (A) Vice Chairman (J)

8-5-2001

(10)

8

PHO.A = 2711/2000

M.A = 21/2001

Present: Shri G.D. Gupta, learned Counsel  
with Shri P.P. Sharma Counsel for  
the applicants.  
Shri K.K. Sood, learned Additional  
Solicitor General with Shri H.K. Gangwani,  
Counsel for the official respondents.

List on 14-5-2001 at 2.00 PM as part

Reard.

(Govindan S. Tampl)  
Member (A)

(Smt. Lakshmi Swarnamalay)  
Vice Chairman (S)

5.  
14-5-2001  
OA 2711/2000  
MA 21/2001

(69)

Present : Shri P.P.Sharma with Shri G.D.Gupta,  
learned counsel for the applicants.  
Shri H.K.Gangwani, learned counsel for the  
official respondents.  
None for the other respondents.

Shri H.K.Gangwani, learned counsel for the  
respondents submits that unfortunately the learned ASG  
is unable to be present today because of the pressing  
work in Nanawati Commission.

2. List on 15-5-2001 at 2 P.M. as part heard  
when Shri H.K.Gangwani, learned counsel will make  
submissions on behalf of the respondents as requested  
by him.

  
(Smt. Lakshmi Swaminathan)  
Vice-Chairman (J)

(Govindan S. Tampi)  
Member (A)

/vikas/

15.5.2001

4.  
PH OA 2711/2000  
MA 21/2001

Present: Sh. G. D. Gupta, learned counsel with Shri P. P. Sharma, counsel for the applicants.  
Shri H. K. Gangwani, learned counsel for the respondents 1-3.  
Sh. V. K. Rao, learned counsel through proxy counsel Ms. Anuradha Priyadarshani, counsel for respondent No. 4.  
None for respondent No. 5

We have heard learned counsel for the parties further.

2. There is an averment in Para 4(v) of the OA that the post of Senior Deputy Director General (Sr. DDG) was created for TEC/TRC. Learned counsel for the applicants has clarified that this post was created some time in 1956 with the designation of Director, TEC/TRC. We note from the reply filed by the respondents that there is no specific averment to these submissions, namely, with regard to the creation of the post of Director/Sr. DDG, TEC/TRC.

3. During hearing, Shri Gangwani learned counsel has also submitted that after the Indian Telecommunications Service (Group A) Recruitment Rules, 1992, in which 17 posts have been shown against Chief General Manager (CGM), some of these have been redesignated as Sr. DDG, Principal General Manager (PGM). The order redesignating ~~one of these~~ <sup>one of these is</sup> ~~one of the~~ posts of Senior General Manager as Sr. DDG, TEC/TRC for ITS Grade A officers should also be placed on record. He has also submitted that there are certain other relevant materials and facts but unfortunately they have not

been referred to as part of the counter reply. One last opportunity is given to the respondents to bring on record the relevant documents on which they rely upon in support of their averments. They should also bring the relevant records with regard to the creation of the post of Sr.DDG, TEC/TRC on the next date of hearing.

(21)

4. Shri H.K.Gangwani, learned counsel seeks and is allowed 10 days to bring on record the relevant facts by way of filing an additional affidavit with advance copy to the other parties.

5. List on 1.6.2001 as Part- Heard.

6. Let a copy of this order be issued to the learned counsel for the parties.

  
(Govindan S. Tampli)  
Member (A)

  
(Smt. Lakshmi Swaminathan)  
Vice Chairman (J)

sk

2-7-2001

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13.

PH O.A. 27/1/2000

M.A. 21/2001

Present: Shri G.D. Gupta, learned counsel with Shri P.P. Sharma, counsel for the applicants.

Shri H.K. Gangwani, learned counsel for the respondents.

Shri Gangwani, learned counsel submits that reply of the applicants to the additional affidavit has been received by the Department only two days back and therefore, he seeks short adjournment.

At the convenience of both the learned counsel, list on 6-7-2001. As this is a part-heard matter, no further adjournment will be granted.

  
(Govindan S. Tampli)  
Member (A)

  
(Smt. Lakshmi Swaminathan)  
Vice Chairman (J)

PH. case  
Addl Affidavit  
filed by respts  
Addl Affi also filed  
by RL.

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ON 24/11/2000

6-7-2001

Present : Sh G. D. Gupta, 1<sup>st</sup> counsel  
with Sh. P. P. Sharma, 1<sup>st</sup> coun-  
sel for the applicants.

SH. H. K. Gangwani, 1<sup>st</sup> counsel  
for the respts No 1-3.

SH. Harwesh Bhatiye DIR(E&H)  
D.T. from Deptt.

SH. V. K. Rao, counsel for the  
respts R-4&5.

Heard, arguments concluded

Order reserved by a D.B of  
Hon'ble Shri L-Swami Nath, VC (J)  
Hon'ble Sh. G-S-Tampli, M(A)

BD

ON 27/11/00 8/8/2001

Prima  
Co-~~cty~~

Order pronounced to day in open  
Court No 3, on dismissed by a above  
D-Bench.  
Judgment/Order attached.

BD  
VCO-CITY

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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A No. 2711/2000  
T.A No.

Date of Decision 8-8-2001

TRC Scientific Officers ..Petitioner  
Class I Association through  
its President Sh. Vinay Topa  
and Ors. ..Advocate for the Petitioner(s)  
Sh. G. D. Gupta with Sh. P. P.  
Sharma

Versus

UOI and Ors ..Respondent

Sh. H. K. Gangwani, learned..Advocate for the Respondents  
Sr. Counsel for Respondents 1-3  
Sh. V. K. Rao for Respondents 4-5

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)  
Hon'ble Shri Govindan S. Tampi, Member (A)

1. To be referred to the Reporter or not ? Yes
2. Whether it needs to be circulated to  
other Benches of the Tribunal ? No

*Lakshmi Swaminathan*  
(Smt. Lakshmi Swaminathan )  
Vice Chairman (J)

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Central Administrative Tribunal  
Principal Bench

O.A. 2711/2000

New Delhi this the 8 th day of August, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).  
Hon'ble Shri Govindan S. Tampi, Member(A).

1. TRC Scientific Officers (Class I)  
Association (through its President,  
Shri Vinay Topa),  
Telecommunication Engineering Centre,  
Khurshik Lal Bhawan, Janpath,  
New Delhi-110001.
2. Shri N.C. Mishra, DDG (TEC),
3. Shri Vinay Topa, DDG (TEC),
4. Shri Ashok Kumar, DDG (TEC),
5. Shri S.K. Malhotra, DDG(TEC),
6. Ms. M. Saxena, DDG (TEC). . . . . Applicants.

(By Advocate Shri G.D. Gupta, with Shri P.P. Sharma,  
learned counsel)

Versus

1. Union of India, through  
its Secretary,  
Government of India, Department  
of Telecommunication,  
Ministry of Communication,  
Sanchar Bhawan, Ashoka Road,  
New Delhi-110001.
2. Member(T), Telecom Commission,  
Sanchar Bhawan,  
Ashoka Road,  
New Delhi-110001.
3. Senior Deputy Director General  
(Sr. DDG),  
Telecommunication Engineering Centre,  
Khurshid Lal Bhawan, Janpath,  
New Delhi-110001.
4. Indian Telecommunication Service  
Association through its General Secretary,  
Sanchar Bhawan,  
New Delhi-110001.
5. Shri N.K. Mangla,  
Sr. DDG (TEC),  
Telecommunication Engineering Centre,  
Khurshid Lal Bhawan, Janpath,  
New Delhi-110001. . . . . Respondents.

(By Advocate Shri H.K. Gangwani, learned Sr. Counsel  
for Respondents 1-3, By Advocate Shri V.K. Rao, learned  
counsel for Respondents 4 and 5)

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## O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

The applicants are aggrieved by the decision of the respondents in not filling the post of Senior Deputy Director General (hereinafter referred to as 'Sr. DDG') in Telecommunication Engineering Centre (TEC), formerly known as Telecommunication Research Centre (TRC) from any of the eligible officers of TEC/TRC. On the other hand, they have submitted that the said post of Sr. DDG is being filled by the respondents from officers belonging to the Indian Telecommunication Service, Group 'A' (ITS) either by way of transfer on deputation from various field units of the Department or by way of promotion from ITS officers. Hence, this O.A seeking a direction to the respondents to (1) strike down the ITS classification of the post of Sr. DDG in TEC/TRC; (2) quash the order dated 22.12.2000 transferring and posting Shri N.K. Mangla as Sr. DDG (TEC) as being mala fide, illegal, discriminatory, arbitrary and unconstitutional; (3) direct Respondents 1 and 2 to consider the eligible applicants for promotion to the post of Sr. DDG in TEC/TRC and promote them, if found suitable, for such promotion with all consequential service benefits; (4) declare that the post of Sr. DDG is to be filled by promotion exclusively from amongst the DDGs of TEC/TRC with two years service as DDGs, failing which by transfer on deputation from other sources; and (5) direct Respondents 1 and 2 to frame Rules for filling the post of Sr. DDG, TEC/TRC within a period of three months in line with the provisions of the Rules of 1988 for the feeder post.

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2. Applicants state that applicant No.1 is a recognised Association of the TEC/TRC Scientific (Class 1) Officers belonging to the General Central Services (GCS) cadre. The members of the Association have submitted that they have been directly recruited in TEC/TRC and are holding the substantive appointments in the Senior Class I post of Deputy Director General (DDG) in the TEC/TRC for 25-35 years. According to them, TEC/TRC which is engaged in the Telecom technology assessment work is an organisation of the Telecommunication Engineering wing of the Department of Telecommunication (DOT) and they perform the work of a technical advisory nature. The TEC/TRC was constituted in the year 1956. They have referred to the Scientific and Technical Officers (S&TOs) Grade-1 (Telecommunication Research Centre of the Posts and Telegraphs Department) Recruitment Rules, 1962 (for short "S&TO Rules"). According to them, the post of S&TO was required to be filled by (1) transfer of Departmental engineering officers; (2) deputation of persons from other organisations in consultation with UPSC; and (3) direct recruitment through UPSC. Shri G.D.Gupta, learned counsel, has submitted that some of the applicants have rendered more than 9-10 years service in the posts of DDG in TEC/TRC and they are entitled to be considered for promotion to the post of Sr.DDG. He has also emphasized that the applicants have no promotional avenues other than the only post of Sr.DDG in their own Organisation i.e TEC/TRC, compared to about 100 posts of Sr.DDGs which are available to ITS officers within the DOT and elsewhere. He has very vehemently submitted that one post of Sr.DDG in TEC/TRC is meant for only officers in the cadre to which the applicants belong and, therefore, the respondents action in denying this position is unfair.

discriminatory and arbitrary. He has also submitted that in spite of several representations made by the applicants, the respondents have not framed any Recruitment Rules and have filled up the post of Sr.DDG from amongst officers belonging to ITS. He has also submitted that the applicants perform the same functions and exercise the same powers and responsibilities within the TEC/TRC and there is no reason at all for the respondents to fill up the lone post of Sr.DDG again from an ITS officer like respondent No.5. His contention is that the only post of Sr.DDG cannot by any stretch of imagination be said to be belonging to ITS, as the said post was specifically created, according to him, for TEC/TRC in their cadre.

3. Learned counsel for the applicants has relied on the order issued by the respondents dated 3.8.1988. He has also referred to the order dated 31.8.1987 wherein it has been stated that a decision has been taken to reorganise the existing TRC into two separate units, namely, (a) a Telecommunication Engineering Centre (TEC), and (b) a Centre for Development of Telecommunication Technology which will be continued to be called as "Telecommunication Research Centre (TRC)". He has also submitted that the TEC is a part of the S&T institution and is separate from TRC and is also a permanent organisation. By the order dated 3.8.1988, the TEC is to be headed by an Officer in SAG who will be designated Engineer-in-Chief which was earlier existing as a post of Director(TRC). He has also drawn our attention to the respondents' averments in Paragraph 9 of the additional affidavit filed on 7.6.2001 that the ITS Recruitment Rules were notified on 6.6.1992 wherein 17 posts of Chief General Managers (CGMs) are mentioned in the pay scale of

Rs.7300-7600. He has relied on the statement of Hon'ble Minister of State for Communication given in the Lok Sabha on 30.3.1982 wherein it has been stated that the officers of the ITS cadre when posted in TRC, are being granted special pay and that officers specifically recruited for TRC through UPSC are performing their functions for which they are recruited; while on the other hand, the officers drawn from the ITS cadre, when posted in TRC, are required to perform the duties which are not in their general line. In the facts and circumstances of the case, Shri G.D.Gupta, learned counsel has very vehemently submitted that the action of the respondents to give the only post of Sr.DDG in TRC to an ITS officer should be struck down and the order dated 22.12.2000 transferring and posting Shri N.K.Mangla as Sr.DDG in TRC should be quashed, being illegal and discriminatory. A prayer has also been made for further direction to the respondents 1-2 to consider the eligible officers from amongst the applicants for promotion to the post of Sr.DDG in TEC/TRC. During the arguments, he has submitted that he does not press the relief as prayed for in Paragraph 8(iii) of the OA. The applicants have also pressed that the post of Sr.DDG in TEC/TRC should be declared to be filled by promotion from amongst the DDGs of TEC/TRC.

4. We have seen the reply affidavits filed by the respondents and heard Shri H.K. Gangwani, learned Sr. counsel. According to them, the post of Senior DDG, TEC is encadred in ITS and as such filled from amongst IST officers appointed under the ITS Recruitment Rules. They have submitted that Respondent No. 5 is an ITS Group 'A' Officer already in the grade of Senior DDG who has been posted in TEC in accordance with the statutory Rules. Accordingly

they have submitted that this is in accordance with the Rules and the applicants have no case. They have also denied the claims of the applicants that the S&TO, Assistant Director and the Deputy Directors belonging to the GCS are similarly situated as the ITS officers and have the same qualifications. They have submitted that the method of recruitment of these two groups of officers is different, namely, the applicants are recruited by the UPSC on the basis of an interview whereas the officers of ITS are recruited through Engineering Services Examinations conducted by the UPSC, comprising of a written examination followed by an interview. They have submitted that the two groups of Officers are differently placed and the nature of duties and responsibilities are also different. Whereas ITS Group 'A' officers are required to be posted in various field units handling the operation, maintenance, installation, quality assurance, training, etc. in the field of Telcommunications, including the activities handled by the TEC, the officers of GCS in TEC like the applicants, handle only the activities being undertaken by the TEC. They have submitted that the promotional avenues available for the two group of officers are also different as they are to be promoted only in their respective cadres on the available vacant posts. They have also denied the claim of the applicants that the post of Sr. DDG has been wrongly classified in ITS. Shri H.K. Gangwani, learned counsel, has also submitted that while there are only about 11 Scientific Technical Officers in TEC, there are more than 5000 officers in ITS cadre. The respondents have also pointed out that the post of Head of the Organisation/TEC has also been historically filled by the ITS officers only. Shri H.K. Gangwani, learned Senior Counsel, has relied on

the judgement of the Supreme Court in **Mallikarjuna Rao Vs. State of AP** (AIR 1990 SC 1251) and he has submitted that no directions can be given, as claimed by the applicants, as the issues involved are a matter of Government policy. He has also submitted that the applicants cannot be considered as stagnating in their posts as most of them have already earned two or three promotions. He has, therefore, prayed that the O.A. may be dismissed as without merit.

5. Shri V.K. Rao, learned counsel, appearing on behalf of Respondents 4 and 5, has submitted that he adopts the submissions made on behalf of the official respondents. He has also submitted that Respondent No. 5 was fully eligible for appointment on transfer from the grade of Chief General Manager and posted as Sr. DDG in TEC, New Delhi as per the order dated 22.12.2000 issued by the Department of Telecommunication.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. Much emphasis has been placed by Shri G.D. Gupta, learned counsel for the applicants in his arguments on the documents filed by the respondents in the additional affidavit, as referred to above. He has also laid much stress on the fact that the TEC is a permanent and a separate organisation and so only the applicants should be considered eligible for promotion to the post of Sr. DDG in TEC. While all this may be correct, we are unable to agree with his further contentions that in the ITS Group 'A' Recruitment Rules of 1992, the applicants have necessarily to be included in the feeder cadre for promotion to the

1/2

grade of Sr. DDG/TEC/TRC. In the Schedule to the ITS Group 'A' Rules, against the posts of CGM, 17 posts have been indicated, out of which the applicants claim that one of those posts<sup>is</sup> meant to be earmarked for Sr.DDG/TEC. The order dated 3.8.1988 which has been issued on the subject of re-organisation of TRC in the Department of Telecommunication and formation of TEC/TRC does not exactly support the case of the applicants where it has been merely stated that the TEC will be headed by an officer in SAG in the scale of Rs.7300-7600, who would be designated as Engineer-in-Chief. If the intention of the makers of the Rules was that out of 17 posts of CGM, one of the posts, that is Sr. DDG should be earmarked for TEC, that could have been provided in the Rules itself.

8. Further, it is relevant to note that the respondents have submitted that the two groups of officers of ITS and GCS have been differently recruited, placed and entrusted with different duties and responsibilities. It is also not the case of the applicants that they have not got any promotions since their induction into their service but their main grievance is that one post in the Sr. DDG level should be kept exclusively for them as ITS Group 'A' officers have got another line of promotion in their field. Taking into account the facts and circumstances of the case, we find that the claim of the applicants is a matter of policy for the Department to decide, taking into account all the relevant factors (See. State of Andhra Pradesh Vs. V.C. Subbarayudu & Ors. (JT 1988 (1) SC 198) and I.S. Sain Vs. Union of India & Ors. (CAT Full Bench Judgements (Principal Bench) (1994-96) P-20). It is also relevant to note that in the letter dated 26.11.1985, the respondents

-9-

have stated that the post of Director of TRC which was at that time in SAG Level-I or II will henceforth be in SAG Level I. Under the ITS Group 'A' Rules, 1992, for promotion to the post of CGM, which has been stated by both the parties as inclusive to Sr. DDG, by way of promotion it is from officers with three years regular service in SAG. The respondents have also stated that the post of Director, TRC/TEC which has been encadred in ITS has been upgraded to SAG Level I which is in the higher Administrative Grade equivalent to CGM. In the circumstances, we are unable to agree with the contentions of the applicants that one post of Sr.DDG in TEC/TRC is meant for only officers in the cadre to which they belong or that the respondents denying this position have acted <sup>& n</sup> discriminatory and arbitrary manner to justify interference in the matter by issuing such directions as claimed..

9. We are fortified in the view we have taken above by the judgement of their Lordships of the Supreme Court in Mallikarjuna's case (supra). The Supreme Court has held as under:

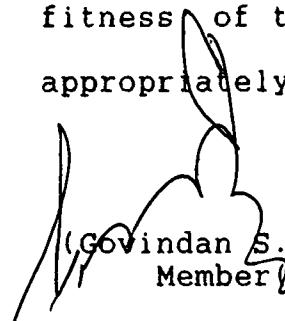
"....The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution. The Courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The Courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution".

(Emphasis added)

10. Therefore, in the facts and circumstances, the claim of the applicants for directions to Respondents 1 and 2 to frame Rules cannot be agreed to. Similarly, their claim that under the relevant ITS Rules, one post of Sr.

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DDG was meant for promotion exclusively from their cadre of officers and not from ITS officers is not supported by the statutory Rules to allow this prayer either. It is not denied that the applicants have earned one or two promotions in their own cadre, upto the level/ post of ~~Asst.~~ DDG in TRC/TEC. In this view of the matter, the O.A. fails and has to be dismissed. However, having regard to the facts of the case, it is appreciated that there is a certain amount of frustration and legitimate expectation in the ranks of the applicants, as the ITS officers already have adequate number of posts in the level of Sr. DDGs. In these circumstances, it will be in the fitness of things for the respondents to examine the issues appropriately in the future. No order as to costs.

  
(Govindan S. Tampli)  
Member (A)

'SRD'

  
(Smt. Lakshmi Swaminathan)  
Vice Chairman (J)